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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE EASTERN DISTRICT OF CALIFORNIA

7 RON KICZENSKI,

8 Plaintiff, No. CIV S-03-2305 MCE GGH PS

9 vs.

10 JOHN ASHCROFT, et al.,

11 Defendants. ORDER

12 _____ /
13 Previously pending on this court's calendar was defendants' motion for summary
14 judgment, filed June 29, 2005, and plaintiff's motion for summary judgment,¹ filed July 5, 2005.

15 In addressing the government's motion, the court became aware of a case which
16 was not previously raised by the parties, Hemp Industries v. Drug Enforcement Admin., 357 F.3d
17 1012 (9th Cir. 2004). The Ninth Circuit held that because the Drug Enforcement Administration
18 ("DEA") did not follow the correct procedures for scheduling a substance, it had no authority to
19 regulate drugs which were not scheduled. Id. at 1018. Specifically, the court found that the Final
20 Rules banning Cannabis plants which are not within the Controlled Substances Act's ("CSA")
21 definition of marijuana or which do not contain synthetic THC, could not be enforced. Id. In
22 other words, the DEA only has authority to enforce rules and regulations banning marijuana or
23 synthetic THC.

24 This case appears to undercut the government's position, and should have been

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26 ¹ Because plaintiff's opposition contains no substantive argument, the court will construe
his motion for summary judgment as an opposition to defendants' motion.

1 brought to the court's attention by the government as it was published prior to the government's
2 motion for judgment on the pleadings or for summary judgment, filed August 6, 2004. Hemp
3 Industries also appears to be on point with plaintiff's initial position. In his complaint, plaintiff
4 alleged, "[t]he hemp plant is a different strain of cannabis with a different chemical-based
5 makeup, and contains no viable amounts of the chemical THC that exists in some of the other
6 strains of cannabis, and is of no end use value in the illegal (drug) trade." Compl. at 16:22-24.
7 In his opposition to defendants' August, 2004 motion, plaintiff also raised the issue of the CSA's
8 authority to regulate his activities because they "do not fall within the definition of this legitimate
9 category of legislative authority." Oppo., filed September 10, 2004, at 2:17-21. Throughout this
10 opposition, plaintiff emphasized that growing hemp for utilitarian purposes was not intended to
11 be outlawed by the government's ban on drugs.

12 Therefore, the parties shall file briefing regarding the applicability of Hemp
13 Industries to this case, including: (1) its pertinence to this case, and (2) if it is pertinent, has not
14 plaintiff raised an issue of fact regarding the type of hemp seeds he is planning to grow and
15 whether they are exempt from the CSA. Defendants' motion for summary judgment will be
16 decided upon submission of this briefing.

17 Accordingly, IT IS ORDERED that the parties shall file simultaneous briefing by
18 November 21, 2005.

19 DATED: 10/28/05

21 /s/ Gregory G. Hollows

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GREGORY G. HOLLOW
23 U. S. MAGISTRATE JUDGE
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